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Hearing Date: April 5, 2016
Time: 10:00 AM

Objections Due: March 29, 2016
Time: 4:00 PM

*Attorneys for Irving H. Picard, Trustee for the
Substantively Consolidated SIPA Liquidation of
Bernard L. Madoff Investment Securities LLC
and the Estate of Bernard L. Madoff*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (SMB)

SIPA Liquidation

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

**MOTION FOR ORDER AMENDING SCHEDULE OF LITIGATION
OF PROFIT WITHDRAWAL ISSUE**

Irving H. Picard, trustee (“Trustee”) for the substantively consolidated liquidation of the business of Bernard L. Madoff Investment Securities LLC (“BLMIS”) under the Securities Investor Protection Act, 15 U.S.C. § 78aaa *et seq.* (“SIPA”), and the estate of Bernard L. Madoff

(“Madoff”), by and through his undersigned counsel, hereby submits this Motion (the “Motion”) for entry of an order amending the schedule for litigation of the profit withdrawal issue (“Profit Withdrawal Issue”) set forth in the Order Establishing Schedule For Limited Discovery and Briefing on Profit Withdrawal Issue, *Sec. Inv’r Prot. Corp. v. Bernard L. Madoff Inv. Sec.*, No. 08-01789 (SMB) (Bankr. S.D.N.Y. June 25, 2015), ECF No. 10266 (“Profit Withdrawal Scheduling Order”).

Under paragraph 14 of the Profit Withdrawal Scheduling Order, discovery on the Profit Withdrawal Issue closes on March 15, 2016. ECF No. 10266. Paragraph 20 of the Profit Withdrawal Scheduling Order states that the order may be modified at the request of any party for good cause shown. *Id.* By this Motion, the Trustee requests a 90-day extension to all dates in the Profit Withdrawal Scheduling Order to accommodate certain discovery described herein.

Recent developments in the profit withdrawal litigation necessitate this Motion. On December 28, 2015, Mr. Aaron Blecker filed a Motion to Compel the Trustee to Allow His SIPC Claim (“Motion to Compel”), ECF No. 12319, which Motion involved the Profit Withdrawal Issue. At a hearing held on February 24, 2016, this Court denied the Motion to Compel. During the hearing, the Court suggested that the Trustee may wish to depose BLMIS employees with knowledge of the treatment of the Profit Withdrawal Issue. Also during the hearing, counsel for Mr. Blecker indicated that she intended to request permission to take the deposition of Bernard L. Madoff on the Profit Withdrawal Issue. Ms. Chaitman filed such motion on March 9, 2016, ECF Nos. 12799 and 12800, which is returnable before this Court on March 23, 2016.

The Trustee seeks relief from the Profit Withdrawal Scheduling Order in order to permit him the opportunity to seek to depose BLMIS employees with knowledge of the Profit Withdrawal Issue. At a minimum, former BLMIS employees Annette Bongiorno and Joann

Crupi are likely to have knowledge regarding the Profit Withdrawal Issue. Ms. Bongiorno and Ms. Crupi were convicted in the criminal trial before Judge Laura Taylor Swain in the United States District Court for the Southern District of New York, *United States v. O'Hara et al.*, 10-CR-228 (LTS) (S.D.N.Y.). An appeal of their convictions is currently pending in the United States Court of Appeals for the Second Circuit, with an argument date scheduled for March 29, 2016. *United States v. O'Hara et al.*, 14-4714cr (2d Cir.). In order to obtain a meaningful deposition with no Fifth Amendment issues, any deposition will need to take place after the conviction is final. Indeed, counsel for Ms. Bongiorno has informed the Trustee that Ms. Bongiorno will not provide testimony until her conviction is final. It is anticipated that Ms. Crupi's counsel would take a similar position. Ms. Bongiorno is currently incarcerated in Coleman, Florida and Ms. Crupi is currently incarcerated in Alderson, West Virginia.

Accordingly, the Trustee requests that the discovery deadline in the Profit Withdrawal Scheduling Order be extended by ninety days so that the criminal convictions can become final, the Trustee can make the appropriate motions under Federal Rule of Civil Procedure 30(a)(2)(B), and the necessary arrangements can be made to take depositions in various federal institutions. The additional time would also be used to determine whether other BLMIS employees have knowledge relevant to the Profit Withdrawal Issue and, if so, to depose them. The proposed amended schedule is as follows, as set forth in the proposed order attached to the Notice of Motion as Exhibit A:

- All fact and expert discovery shall end on or before June 13, 2016.
- On or before July 13, 2016, Participating Claimants may file briefs with respect to the Motion and any accompanying declarations, documents or other support.

- On or before August 3, 2016, the Trustee and SIPC may file replies. The replies may address any facts or issues that arose during discovery.
- On or before August 24, 2016, Participating Claimants may file sur-replies limited to the issues raised in the Trustee's and SIPC's replies.
- The Court shall hear the Motion and/or hold an evidentiary hearing at a date to be determined.

Two law firms are participating in the litigation of the Profit Withdrawal Issue on behalf of their clients, Chaitman LLP and Baker & McKenzie LLP. Counsel for the Trustee contacted counsel for the Participating Claimants to determine whether they would consent to the request for an extension and they declined to do so. However, Mr. Blecker will require similar relief if his motion to depose Mr. Madoff on the Profit Withdrawal Issue is granted. Thus, to the extent that Mr. Blecker's motion is granted, the Trustee submits that there is no prejudice to the Participating Claimants in seeking this relief. Even if Mr. Blecker's motion is denied, granting this Motion will permit the record on the Profit Withdrawal Issue to be fully developed for this Court's determination and final resolution.

WHEREFORE, the Trustee respectfully requests that the Court: (a) enter an order substantially in the form attached to the Notice of Motion as Exhibit A, granting the relief requested herein; and (b) grant such other and further relief as the Court deems proper.

Dated: New York, New York
March 14, 2016

Respectfully submitted,

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